

Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

No. 76-1276

MORRIS RICHARD EDWARDS PETITIONER,

VS.

**WARDEN, KENTUCKY STATE
PENITENTIARY RESPONDENT.**

**BRIEF FOR RESPONDENT IN OPPOSITION
TO A PETITION FOR A WRIT
OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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IN A STATE PROSECUTION FOR RAPE, WERE
THE DUE PROCESS RIGHTS OF THE PETITI-
ONER VIOLATED BY THE TRIAL COURT'S
REFUSAL TO ORDER A PRETRIAL PSYCHIA-
TRIC EXAMINATION OF PETITIONER?

COUNTERSTATEMENT OF THE FACTS

Petitioner Edwards, hereafter Edwards, was charged in Louisville, Jefferson County, Kentucky, in the Jefferson Circuit Court with three counts of Rape. Trial began September 18, 1972. On September 15, 1972, at a

pretrial motion hearing, Edwards' counsel requested a psychiatric examination of the *prosecuting witnesses*, which was overruled. No motion was made for a psychiatric examination of Edwards.

On trial date, September 18, 1972, Edwards' counsel, in chambers, advised the court that Edwards had been offered in plea bargaining a recommendation of a sentence of twenty (20) years, but that Edwards had rejected this offer and desired a jury trial. The trial judge heard personally from Edwards that he was aware of the offer but had declined the recommendation and chose to go to trial.

On September 19, 1972 when testimony was to be heard, Edwards' counsel, for the first time, moved to postpone trial and requested that Edwards be examined by a psychiatrist. His motion was accompanied by an affidavit of Edwards' mother, Anna Louise Edwards, that her son was a premature baby, that there were complications during delivery, at age two he swallowed amphetamines, at age three he received an overdose of bug spray, that his reading comprehension was at a first or second grade level, that two years prior to trial Edwards overdosed on heroin and that in his mother's opinion, Edwards suffered from brain damage which would prevent his understanding the charges against him.

Edwards' counsel, by affidavit, also advised that in his opinion Edwards suffered from brain damage because Edwards refused to accept the Commonwealth of Kentucky's offer of twenty (20) years imprisonment, and thereby such refusal indicated he lacked understanding of the nature of the charges against him.

The prosecutor advised the court that Edwards' parents had consulted with the police court judge prior to examining trial but never discussed his mental condition.

The trial judge refused to postpone trial and order a psychiatric examination on the grounds that there were insufficient facts present to indicate reasonable grounds for delaying trial and appointing a psychiatrist. The trial judge did leave the question of mental competency open should additional evidence develop during the trial.

On September 20, 1972, in chambers, Edwards put on a Dr. Bell, a psychiatrist, who testified that he never examined Edwards, but based upon the affidavit of Edwards' mother, alone, it was his opinion that the assertions of the mother's affidavit could be associated with organic brain disease. The court refused to postpone the trial.

During the trial, Edwards' wife testified that she had gone through grade school and into high school together with him and that he seemed like an ordinary person and there was nothing wrong with him physically or mentally.

The jury was given an insanity instruction. The jury found Edwards guilty of the three rapes, did NOT find him insane, and sentenced him to life imprisonment without parole.

Edwards appealed his conviction, which was affirmed and reported as *Edwards v. Commonwealth*, Ky., 500 S.W. 2d 396 (1973). He filed a petition for a writ of

habeas corpus in the United States District Court, Western District of Kentucky at Louisville, which was denied. He appealed to the United States Circuit Court of Appeals, Sixth Circuit at Cincinnati, and that Court affirmed the district court's denial of the writ. He now seeks a petition for a writ of certiorari in this Court.

REASON FOR DENYING THE WRIT

Edwards seeks to convince this Court that the facts of his case are similar to those which led to the decisions in *Pate v. Robinson*, 383 U.S. 375, 86 S. Ct. 836, 15 L.Ed. 2d 815 (1966), and *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L.Ed. 2d 103 (1975). The facts in the latter two cases are entirely different than those found in this case.

In *Pate v. Robinson*, supra, the defendant was violent at his trial and had to be strapped in a wheel chair during the trial. He imagined he heard voices, saw animals — snakes and elephants. Four witnesses testified Robinson was insane and there was ample evidence of his erratic behavior at time of trial.

In *Drope v. Missouri*, supra, a psychiatrist's report was submitted with the motion to have the defendant examined. His (the defendant's) wife related bizarre activity. The defendant shot himself while on trial, and the court proceeded to hear the case in the defendant's absence.

The facts here are entirely unlike those in *Robinson* and *Drope*.

Here, there is merely a last minute trial tactic of

defense counsel to continue the trial, perhaps to allow counsel time to persuade Edwards to reconsider the offer of the prosecution in plea bargaining. The trial judge had before him an affidavit of Edwards' mother and Edwards' counsel. One said she suspected him of brain damage because of early events in his childhood. (Such events are normal occurrences in many children). There was no substantial evidence presented that Edwards was not cognizant of the charges then pending or that he could not rationally participate in his defense at trial. The psychiatrist's testimony during trial is worthless. He never examined Edwards. He only examined Edwards' mother's affidavit and gave his opinion that based upon said affidavit, the facts related therein could possibly be associated with brain damage syndrome — not that Edwards, at time of trial, was not sufficiently oriented to stand trial or to participate in his defense.

The facts of Edwards' early life were given to the jury and it refused to find him insane. Edwards' wife testified he was normal and she knew him through grade and high school years before she married him.

The trial judge correctly determined that there were insufficient reasonable grounds present to postpone trial and order a psychiatric examination. To our knowledge, to this date, there has been no attempt to declare Edwards incompetent.

No due process rights have been violated here; in fact, they have been scrupulously observed. Edwards has had more than his day in court; he has had many days in court.

CONCLUSION

The trial court was justified in refusing to conduct a psychiatric examination of Edwards, and his refusal to do so did not violate Edwards' constitutional right to Due Process of Law under the Fourteenth Amendment to the Constitution of the United States. Certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I certify that a true copy of the foregoing Brief of Respondent in Opposition to a Petition for a Writ of Certiorari was served on Honorable Jack S. Nordby, Thompson, Nordby and Peterson, Suite 1530 - East Fifth Street, Saint Paul, Minnesota 55101, Counsel for Petitioner, by mailing, Postage prepaid, on this 13th day of April, 1977.



Martin Glazer
Assistant Attorney General